IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 3897 of 2006()

CRA.86/2006 of SESSIONS COURT, KOZHIKOE
CC.191/2005 of JUDL.MAGISTRATE OF FIRST CLASS-II, THAMARASSERY

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REVN. PETITIONER: APPELLANT/ACCUSED

M.V.SANTHOSH, S/O.VARKEY,
AGED 38 YEARS, (LOYAL DRY CLEANING),
MANIYANKERI HOUSE, THIRUVAMBADI P.O.,
KOZHIKODE.

BY ADV. SRI.K.M.JAMALUDHEEN
SMT.LATHA PRABHAKARAN

RESPONDENTS: COMPLAINANT

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1. S.J.THOMAS, S/O.JOSEPH,
AGED 62 YEARS, NEELESWARAM AMSOM AND DESOM,
KALLURUTTY P.O., THIRUVAMBADI VIA.,
KOZHIKODE DISTRICT.

2. STATE OF KERALA, REP. BY ITS PUBLIC
PROSECUTOR,
HIGH COURT OF KERALA, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT.J

Crl.R.P No. 3897 OF 2006

Dated this the 19th day of December 2006

ORDER

This revision petition is directed against a concurrent verdict of guilty conviction and sentence in a prosecution under Section 138 of the Negotiable Instruments Act. The petitioner has preferred this revision petition. The petitioner now faces a sentence of imprisonment till rising of Court and to pay the actual cheque amount of Rs.30,000/- as compensation and in default to undergo simple imprisonment for a period of three months.

2. Signature in the cheque is admitted. Notice of demand was duly received and acknowledged. A reply was issued as Ext.P6. The notice did not succeed in securing payment. The contention was raised that the cheque was issued as a blank signed cheque as security when an earlier transaction for an amount of Rs. 5,000/- was entered into. Even though the principal amount along with interest had been repaid, the cheque was not returned and the same was being mis-utilised now by the complainant it was contended. The complainant examined himself as PW1. Exts P1 to P6 were marked. The accused did not adduce any evidence- oral or

documentary.

3. The courts below concurrently came to the conclusion that the complainant has succeeded in establishing all ingredients of the offence punishable under section 138 of the N.I.Act. Accordingly they proceeded to pass the impugned concurrent judgments.

4.. Called upon to explain the nature of the challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned counsel for the petitioner only reiterates the contention that the cheque was not issued for the due discharge of any legally enforcible debt/liability, but was mis-utilised taking advantage of a blank signed cheque available with the complainant.

5. I find no merit whatsoever in this contention. The simple fact that the reply notice was issued raising such a contention and the further fact that unsubstantiated suggestions were there to the complainant in the course of cross-examination is certainly not sufficient to persuade the Court to accept the defence that the cheque was a blank signed cheque handed over by the indictee to the complainant. That contention cannot stand.

6. The sentence imposed is also absolutely reasonable. There is no space for any further indulgence or leniency on the question of sentence.

7. The learned counsel for the petitioner finally prays that the petitioner who is now facing grave financial difficulties and physical ailments may be given sometime to pay the amount and avoid the default sentence. In the facts and circumstances of the case I am satisfied that a lenient view can be taken and some further time can be granted to the petitioner to make the payment and to avoid the default sentence.

8. In the result this Crl.R.P. is dismissed but with the observation that the petitioner shall have time till 28-2-2007 to appear before the learned Magistrate and pay the amount to avoid the default sentence. If the petitioner does not appear before the learned Magistrate on or before that day to make the payment the learned Magistrate shall thereafter proceed to execute the sentence. Needless to say, amount if any already deposited before the trial Court shall be given due credit

R.BASANT, JUDGE

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